

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENYON DERRAL BROWN,

Petitioner,

v.

NORTHERN KERN STATE PRISON,
WARDEN,

Respondent.

No. 1:21-cv-01061-ADA-HBK (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. Nos. 1, 17, 35)

Petitioner Kenyon Derral Brown is a state prisoner proceeding *pro se* and *in forma pauperis* with an amended petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 29, 2022, the assigned magistrate judge issued findings and recommendations recommending the court grant respondent's motion to dismiss and dismiss the pending petition for lack of federal habeas jurisdiction. (Doc. No. 35.) Those findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days of service. (*Id.*) On July 15, 2022, petitioner filed objections that largely restated the claims made in his petition; therefore, petitioner's filed objections were unpersuasive.

(Doc. No. 36.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. After carefully reviewing the entire file, including petitioner's objections, the court holds the findings and recommendations to be supported by the record and proper analysis.

Having found that petitioner is not entitled to habeas relief, the court now turns to whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is allowed in only certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching the underlying constitutional claims, the court should issue a certificate of appealability "if jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists would not find the court's determination that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to proceed further. Therefore, the court declines to issue a certificate of appealability.

Accordingly,

1. The findings and recommendations issued on June 29, 2022, (Doc. No. 35) are adopted in full;
2. Respondent's motion to dismiss (Doc. No. 17) is granted;
3. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
4. The court declines to issue a certificate of appealability; and

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1 5. The Clerk of Court is directed to close the case.

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4 IT IS SO ORDERED.

5 Dated: September 14, 2022


UNITED STATES DISTRICT JUDGE